

STATE OF INDIANA)	MARION CIRCUIT AND
)	SUPERIOR COURTS
COUNTY OF MARION)	
)	
In Re Local Court Rules)	

**Notice of Proposed Local Rule Amendments, Finding Good Cause to Deviate
from the Schedule for Amending Local Court Rules,
Requesting Comments and Supreme Court Approval**

The Judges of the Marion County Courts in compliance with the provisions of Trial Rule 81 give Notice of proposed amendments to their local court rules concerning **Rules on Caseload Allocation at LR49-AR 1(E)-302**. And, pursuant to Trial Rule 81(D), the Judges find that good cause exists to deviate from the schedule established by the Division of State Court Administration for the publishing of amendments to local rules. Supreme Court approval is required for amendments to these local rule amendments and is requested. Accordingly, the Courts issue the following proposed amendments to the Marion County Local Court Rules and ask for comment from the bar and the public. Underlining indicates proposed additions and striking through indicates deletions. The amended rules as posted after comments will be effective on **May 26, 2015**.

Comments to these proposed Local Rule amendments will be received through **Noon on May 26, 2015**. Comments to these proposed amended Local Rules should be e-mailed to the Office of the Court Administrator, c/o Emily VanOsdol, at emily.vanosdol@indy.gov

or mailed to:

Office of the Court Administrator
c/o Emily VanOsdol
Marion County Circuit and Superior Courts
200 East Washington St., Ste. T-1221
Indianapolis, IN 46204

All of the above is so ORDERED this 27th day of April, 2015.

/s/ John M.T. Chavis, II *
Judge John M.T. Chavis, II
Presiding Judge

* Original signature on file with the Court.

LR49-AR1(E)-302¹. Rules on Caseload Allocation.

A. Purpose. Caseload allocations shall allow the judges of the Marion Superior Court to make thoughtful, timely, reasonable and just decisions.

B. Procedure. The Executive Committee shall at least annually:

1. Review and assess literature on case flow management from any source with a view toward the improvement of the Court's case flow from filing to disposition;
2. Review and consider suggestions made by members of the bar, the public and other interested parties; and
3. Review and analyze the statistics or current workload and case flow within the Court.
 - a. Civil cases shall be assigned in accordance with LR49-TR3-200 Random Filing of Civil Cases. Criminal cases shall be filed in accordance with LR49-CR 2.2-100 Random Assignment of Criminal Cases and LR49-CR 2.3-101 Case Consolidation.
 - b. Allocate Judicial Officers where appropriate to keep within the weighted caseload requirements of no more than a .40 deviation between any two courts.
 - c. Any change involving caseloads, whether it is type of case or number of cases, shall require a majority vote of the Executive Committee and is subject to review under LR49-AR00-300(F)(2).
 - d. In deciding changes, the Executive Committee shall give due weight to the expertise and abilities of each judge, the stress associated with the types of cases and caseloads, and the goal of keeping each judge competent in the various areas of the law. Seniority shall be a consideration, but not the determinant factor for caseload allocation or courtroom assignment.
 - e. As new judges are appointed or elected to the Court, the Executive Committee shall assign them to courtrooms using the same criteria.
 - f. All existing Mental Health Diversion Grant (known as "PAIR") cases will be transferred from court G12 to misdemeanor court G08. G08 utilization shall be maintained at a level consistent with that of all other misdemeanor courts.
 - g. All existing PL (Civil Plenary) case type cases will be transferred from court G12 to Civil Division court D02.
 - h. All existing OV (Ordinance Violations) cases will be transferred from court G12 to court G21.
 - i. Court G12 will be set up with a regular Misdemeanor court and would be allocated 20% of the misdemeanor cases within the case filing pathway. The other courts in the misdemeanor court (G07, G08, G10, G19) would also receive 20% of case filings.
 - j. Criminal case filings in court G21 would move to criminal division courts G16 and G17. All future criminal case filings would be distributed equally amongst court G16 and G17. These would include the CM, MC, FD and F6 case type filings.

C. Implementation. The Clerk of the Court shall maintain systems as required to implement orders of the Court relating to case allocation.

D. Record Keeping. All matters of statistics and case flow management shall be collected and maintained by personnel in the office of Marion County Court Administration. All judges and their staffs shall be responsible for the collection and preparation of these statistics in a form and manner directed by the Executive Committee.

¹ See Supreme Court Order regarding Local Rules for Caseload Management issued on September 8, 2010

LR49-TR3-200 RANDOM FILING OF CIVIL CASES

A. All civil cases filed with the Marion County Clerk's Office designated by statute or rule as being required to be filed in certain named Courts shall be so assigned.

B. Cases involving a petition for specialized driving privileges pursuant to I.C. § 9-30-16 in which the suspension of the driving privileges was not imposed by or recommended by a court imposing a sentence in a criminal case, and was not based upon delinquent child support or the person's status as a student under I.C. § 9-24-2, shall be filed in the Marion Circuit Court; all other petitions or requests for specialized driving privileges shall be filed in the court in which the charges are pending or in which the sentence was imposed, in the court in which the issue of child support is docketed, or in the Juvenile Division if the suspension was based upon the person's status as a student under I.C. § 9-24-2.

C. Civil Plenary (PL), Mortgage Foreclosure (MF), Civil Collections (CC), Civil Torts (CT), and Domestic Relations (DR) cases shall be allocated at follows:

1. Civil Plenary (CP/PL) cases

- a. 1% shall be randomly filed in Circuit Court, and
- b. 99% shall be filed in Superior Court, divided randomly and evenly among the judges of the Civil Division (49D01, 49D02, 49D03, 49D04, D9D05, 49D06, 49D07, 49D10, 49D11, 49D12, 49D13, and 49D14).

2. Mortgage Foreclosure (MF) cases

- a. 5% shall be randomly filed in Circuit Court, and
- b. 95% shall be filed in Superior Court, divided randomly and evenly among the judges of the Civil Division (49D01, 49D02, 49D03, 49D04, D9D05, 49D06, 49D07, 49D10, 49D11, 49D12, 49D13, and 49D14).

3. Civil Collections (CC) cases

- a. 1% shall be randomly filed in Circuit Court, and
- b. 99% shall be filed in Superior Court, divided randomly and evenly among the judges of the Civil Division (49D01, 49D02, 49D03, 49D04, D9D05, 49D06, 49D07, 49D10, 49D11, 49D12, 49D13, and 49D14).

4. Civil Torts (CT) and Domestic Relations (DR) cases

Shall be assigned in the proportion of 100% in Superior Court, divided randomly and evenly among the judges of the Civil Division (49D01, 49D02, 49D03, 49D04, D9D05, 49D06, 49D07, 49D10, 49D11, 49D12, 49D13, and 49D14).

D. ~~Marion Superior Court F12 (Environmental Court)~~ Marion Superior Court, Civil Division D02 shall be assigned the following cases:

1. Any civil case where the environment is involved as the lead issue or where a decision of an environmental administrative agency is being appealed;
2. Any civil action that includes a count based upon or involving Indiana Code Title 13/ Environment or Title 14/ Natural and Cultural Resources;
3. Any civil action requiring judicial review from final agency action involving an environmental matter;
4. Department of Revenue UST and solid waste fee tax warrants;
5. Common law theories of recovery such as toxic torts, property contamination cases alleging nuisance, trespass, negligence and environmental cleanup and contribution actions;
6. Open Door and Public Record suits or appeals related to IDEM, DNR, ISHD, State Fire Marshall or the Fire Prevention and Building Safety Commission; and
7. Contract or other disputes involving a substantive environmental issue.

E. Civil cases involving judicial review of a zoning decision pursuant to IC 36-7-4-1601 et seq. shall be filed in Marion Superior Court, Civil 7 (D07).

F. Civil cases requiring judicial review of a final State Agency decision under Article 21.5 of the Indiana Administrative Orders and Procedures Act (I.C. 4-21.5 et seq.) shall be randomly assigned.

G. Civil cases requiring judicial review of an administrative decision of the Bureau of Motor Vehicles pursuant to I.C. § 9-30-10 shall be filed in the Marion Circuit Court.

H. Civil cases requiring judicial review of an administrative decision of the Bureau of Motor Vehicles pursuant to I.C. § 9-24-2 shall be filed in the Juvenile Division of the Marion Superior Court.

All civil cases other than those listed above filed with the Marion County Clerk's Office for the Marion Superior Court shall be assigned to an individual courtroom on a random basis. The process for the random assignment shall be done through the Court and Clerk's automated case management system.

MARION SUPERIOR COURT CRIMINAL DIVISION RULES

LR49-CR2.2-100 RANDOM ASSIGNMENT OF CRIMINAL CASES

(a) All criminal cases filed in Marion County in the Superior Courts shall be assigned to an individual courtroom on a random basis. The random assignment rule for criminal cases does not apply to certain cases designated by the Court and Prosecutor as belonging in the:

- domestic violence courts; or
- protection order court; or
- major felony and class D/Level 6 felony drug court; or
- ~~community court; or~~
- traffic court; or
- ~~mental health court or~~
- those cases involved in LR49-CR2.3-101 Case Consolidation.

This rule strives for the equalization of caseload among all of the individual courtrooms.

(b) All hearings for Major Felony cases will be conducted in the Major Felony Court. Any new filing for a major felony case shall be randomly assigned to one of the multiple courtrooms designated as Major Felony Courts (G01, G02, G03, G04, G05, and G06) with the exception of a major felony drug offense case and a major felony handgun case which shall be assigned to court G20.

(c) Initial hearings for all Class D/Level 6 Felony Cases that are the result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court (G11). These cases shall be subsequently assigned on a random basis to one of the multiple courtrooms designated as Class D/Level 6 Felony Courts (G09, G15, G18, G24 and G25). The random assignment rule for criminal cases does not apply to Class D/Level 6 felony cases involving allegations of domestic violence or to Class D/Level 6 felony cases designated as drug court cases. Cases involving an allegation of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Class D/Level 6 felony drug cases shall be assigned to the D felony/Level 6 drug court (G14).

- (d) Initial hearings for cases involving Misdemeanor Cases that are a result of a custodial arrest where the defendant is still in custody shall be conducted in the Initial Hearing Court, Court 11. These cases shall be assigned on a random basis to one of the multiple courtrooms designated as Misdemeanor Courts (G07, G08, G10, G12 and G19). Misdemeanor cases involving allegations of domestic violence shall be randomly assigned to either of the domestic violence courts (G16 and G17). Misdemeanors involving allegations of violations of traffic laws, with the exception of Operating a Vehicle While Intoxicated, shall be assigned to the Traffic Court (G13). ~~Misdemeanors where the alleged offense occurred within the boundaries of the Community Court Project shall be assigned to the Community Court (G12).~~ If the judge, defense counsel or prosecutor believe the defendant may have a mental illness and/or mental disability, the judge, defense counsel or prosecutor may apply to the PAIR Roundtable for evaluation. If, after evaluation, the PAIR Roundtable finds the defendant is PAIR eligible, the case shall be transferred to the designated ~~mental health~~ PAIR court. In the event the defendant fails the PAIR program, the case shall be returned to the originating court for adjudication.
- (e) In the event that a defendant has a Misdemeanor or D Felony/Level 6 Domestic Violence case, and that case is amended to include a class C/Level 5 Felony charge, that case shall stay in the Domestic Violence Court to which it was originally assigned.

LR49-CR2.3-101 CASE CONSOLIDATION

It shall be the policy of the Marion Superior Court, that wherever possible consistent with good case management principles, cases involving the same defendant shall be consolidated into one court for resolution of all of the pending cases.

(a) Murder, Class A, B and C Felony Cases, and Level 1, 2, 3, 4, and 5 Felony Cases (hereinafter “Major Felony case”)

Any subsequently filed Major Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

Any subsequently filed Class D/Level 6 Felony or Misdemeanor Case shall be assigned and/or transferred to the Court where the defendant’s oldest Major Felony case is pending.

In the event the defendant has an open Class D/Level 6 Felony or Misdemeanor case pending in any criminal court and is subsequently charged with a Major Felony case, the pending Class D/Level 6 Felony or Misdemeanor case shall be transferred to the Major Felony Court.

In the event the defendant has an open probation case and/or open community corrections violation pending in any criminal court and is subsequently charged with a Major Felony case, the probation case and/or open community corrections violation shall be transferred to the Major Felony Court, unless the probation case and/or open community corrections violation can be resolved without the resolution

of the new Major Felony case.

“Pending” as defined herein means any existing Major Felony, Class D/Level 6 Felony or Misdemeanor case which is in pre-disposition status.

No classification of cases is exempt from consolidation under this sub- paragraph.

(b) Class D/Level 6 Felony Cases

Any subsequently filed Misdemeanor or Class D/Level 6 Felony case shall be assigned and/or transferred to the Court where the defendant’s oldest existing Class D/Level 6 Felony case is pending.

In the event the defendant has an open Misdemeanor case in any criminal court and is subsequently charged with a Class D/Level 6 Felony case, the Misdemeanor case shall be transferred to the Class D/Level 6 Felony Court.

In the event the defendant has an open probation case and/or open community corrections violation pending in any Class D/Level 6 Felony or Misdemeanor Court and is subsequently charged with a Class D/Level 6 Felony case, the probation case and/or open community corrections violation shall be transferred to the Class D/Level 6 Felony Court where the new case has been filed, unless the probation case and/or open community corrections violation can be resolved without the resolution of the new Class D/Level 6 Felony case.

“Pending” as defined herein means any existing Class D/Level 6 Felony or Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17 or cases that are linked with a co- defendant. However, if one of the co-defendants is accepted into the PAIR program, the accepted defendant may be severed and transferred to the designated Mental Health PAIR Court without the non-accepted co-defendant(s) case(s).

(c) Misdemeanor Cases

Subject to the provisions of paragraphs (a) and (b) above, any subsequent Misdemeanor case filed against a defendant shall be assigned and/or transferred to the Court where the defendant’s oldest existing Misdemeanor case is pending with the exception that Court 13 (Traffic Court) shall not receive assignment or transfer of cases when Court 13 has the oldest pending case.

In the event the defendant has an open probation case pending in any Misdemeanor Court and is subsequently charged with a new Misdemeanor case, the probation case shall be transferred to the new Misdemeanor Court unless the probation case can be resolved without the resolution of the new Misdemeanor case.

Pending as defined herein means any existing Misdemeanor case which is in pre-disposition status.

This rule shall not apply to Domestic Violence cases, cases assigned to Domestic Violence Courtrooms 16 and 17, or cases that are linked with co- defendants. However, if one of the co-defendants is accepted into the PAIR program, the accepted defendant may be severed and transferred to the designated Mental Health Court without the non-accepted co-defendant(s) case(s).

(d) All Misdemeanor and D Felony/Class 6 cases in which the defendant has a mental illness and /or mental disability shall be transferred to mental health court, subject to the discretion of the Judge in that court and considering the recommendation of the originating judge, prosecutor, and/or defense counsel.

(e) Other Considerations

In the event that a case involves both felony and misdemeanor offenses, pursuant to Administrative Rule 1, the case shall be considered a Felony case for the application of this rule.

It shall be the responsibility of the Prosecutor's Office Screening Department to provide a listing of all pending cases with the case filing documents to ensure that all case transfers can be made consistent with this rule.

The judge of each room of the criminal division, by appropriate order entered of record may transfer and re-assign to any other room of the criminal division any cause pending in that room subject to acceptance by the receiving court. Further the Presiding Judge of the Criminal Division or the Executive Committee may order the transfer of cases from one court to another if the Presiding Judge or the Executive Committee finds that a transfer and reassignment of cases is necessary to provide for the speedy and fair administration of justice.

All cases received by the criminal division on change of venue from outside Marion County shall be assigned to a room within the division on a random basis by the same method used to assign cases of original jurisdiction in Marion County. When the State of Indiana dismisses a case and chooses to re-file that case, the case shall be re-filed in the court where the case was originally docketed. All pleadings, petitions and motions shall be filed with the Clerk designated by the court at any time during filing hours established by the Clerk and the court and shall be accompanied by a proposed order.

All orders submitted to the court shall be in sufficient number and shall be accompanied by postage paid envelopes addressed to each party or counsel of record. Service of orders on the Marion County Prosecutor and the Marion County Public Defender Agency may be through mailbox service established in each courtroom.

LR49-CR00-115. FEES

A. In addition to costs as set by I.C. 33-37-4-1 whenever an individual is placed on probation, or without placing a person on probation the following fees and costs shall be imposed under the Probation Court or Probation Order unless the sentencing Judge specifically modifies the Order. The fees and costs collected under the Court or Probation Order shall be applied in this order of priority.

Administrative fee

Probation User fee

Alcohol and Drug Service fee (33-37-5-8)

Court Costs (I.C. 33-37-4-1) Restitution (35-50-5-3)

Public Defender Reimbursement * (35-33-7-6)

Safe School fee (I.C. 33-37-5-18)

Child Abuse Prevention fee (I.C. 33-37-5-12) Drug

Interdiction fee (I.C. 33-37-5-9)

Alcohol Countermeasures fee (I.C. 33-37-5-10) Domestic

Violence fee (33-37-5-13)

(*Fee imposed only after judicial determination of ability to pay)

In the event that these specific fees, or any other court ordered fees, are not paid, the Court may enter judgment against the individual and may seek appropriate steps to collect the judgment owed.

B. Whenever a juvenile is placed on probation from Juvenile Court the following fees and costs shall be imposed under the appropriate Court Order unless the Judge presiding over the case specifically modifies the Order. The fees and costs collected under the Order shall be applied in this order of priority.

Probation User Fee Restitution

Public Defenders Fee Court

Costs

In the event that these specific fees, or any other court ordered fees, are not paid, the Court may enter judgment against the individual and may seek appropriate steps to collect the judgment owed.

C. Whenever a person is ordered by any Judicial Officer of the Marion Superior Court to be tested by the Marion Superior Court Drug Testing Laboratory, an appropriate fee shall be paid at the time of testing. The Marion County Drug Lab shall collect said fee and all such fees shall be Probation Department funds.

If a confirmatory test is requested by an individual, an appropriate fee shall be paid at the time of testing. The Judicial Officer ordering an individual for drug testing retains authority to determine that individual is indigent and order a waiver of the testing

D. All Marion County Courts certified as Problem-Solving Courts under I.C. 33-23- 16

may assess costs pursuant to statute.

1. **Drug Court.** The Judge may impose on those persons directed to participate in the Marion County Drug Court Program a \$100 administrative fee as well as a problem-solving court services fee of \$25 for each month of problem-solving court participation in accordance with I.C. 33-23-16-23. The monthly fee shall not exceed \$600 in total assessment. The clerk of the court shall collect and transmit these fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the county user fee fund established under I.C. 33-37-8.
2. **Re-Entry Court.** The Judge may impose on those persons directed to participate in the Marion County Re-Entry Court Program a \$100 administrative fee as well as a problem-solving court services fee of \$25 for each month of problem-solving court participation in accordance with I.C. 33-23-16-23. The monthly fee shall not exceed \$600 in total assessment. The clerk of the court shall collect and transmit these fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the county user fee fund established under I.C. 33-37-8.
3. ~~**Community Court.** The Judge may impose on those persons directed to participate in the Indianapolis Community Court a one-time problem-solving court services fee of \$50. The clerk of the court shall collect and transmit these fees within thirty (30) days after the fees are collected, for deposit by the auditor or fiscal officer in the appropriate user fee fund established under I.C. 33-37-8.~~

LR49-TR5-205. FILING OF PLEADINGS, MOTIONS AND OTHER PAPERS

A. Room Clerk. All pleadings, petitions and motions are filed with the Clerk designated by the Court at any time during office hours established by the Clerk and the Court. All orders submitted to the Court shall be in sufficient number and shall be accompanied by postage paid envelopes addressed to each party or counsel of record.

B. Facsimile. Facsimile filing is discouraged, but permitted in the Marion Circuit and Marion Superior Court. All documents filed by facsimile shall also be filed in hard copy within seven days of the facsimile filing, along with proposed orders and stamped addressed envelopes, as required by LR49-TR5- 203 (E). **To avoid duplicate filings, the hard copies of the facsimile filing shall indicate in bold letters that the pleading was previously filed by facsimile transmission.** Proof of transmission by facsimile, including certificate of service and manner of service, shall be the responsibility of the filing party. If the filing requires immediate attention of the Judge, it shall be so indicated in bold letters in an accompanying transmittal memorandum. Legibility of documents and timeliness of filing is the responsibility of the sender.

C. Counsel to Furnish Pleadings to Special Judge. When a Special Judge who is not a Marion County Judge is selected, all parties or attorneys shall furnish such Judge with copies of all filings prior to the qualification of such Special Judge. Thereafter, copies of all filings shall be delivered in person, by mail or by facsimile to the office of the Special Judge with certificate of forwarding same made a part of the filing.

D. Number. Counsel shall file with the court an original and one copy of all briefs, and memoranda of law filed in support of a motion.

E. Appearance Form. Pursuant to Trial Rule 3.1(A), an appearance form shall be filed by the initiating party at the time an action commenced. ~~If the action is appropriate for filing and disposition in Marion Superior Court, Environmental Division, per Order of the Executive Committee of the Marion Superior Court, then the initiating party shall indicate such on the appearance form.~~

LR49-TR79-224. APPOINTMENT BY CLERK

Upon the parties not reaching an agreement or the agreed upon judge not accepting the case under Local Rule 225, the appointment of an eligible special judge shall be made by means of the Marion County Clerk selecting a name of the next judge from lists of judges from Marion County maintained by the Clerk. A separate list shall be kept for domestic and juvenile cases.

All judges of the Marion Circuit and Superior Court Civil Division are eligible persons under this rule except as follows: the judge of the Marion Circuit Court shall not be named on the list for domestic relation cases; the judges of the Juvenile Division ~~and the Environmental Division~~ shall not be named on any list; and the judge of the Probate Division shall be named only on the lists for domestic relations and juvenile cases.

Should the next judge on the list be disqualified pursuant to the *Code of Judicial Conduct*, ineligible for service under this rule, or excused from service by the Indiana Supreme Court, the clerk shall continue down the list until all judges on the list have been exhausted. Upon exhaustion of the list, the judge from whom the change of judge was taken, or who is ineligible or disqualified, shall certify the case to the Indiana Supreme Court for the appointment of a special judge by the Court. Further, the judge may certify a case directly to the Indiana Supreme Court where the particular circumstances of the case warrant selection by the Court without reference to the clerk for selection from a list.